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KENNETH PRESBA and KRIS PRESBA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENNETH PRESBA, et al.,

Plaintiffs,

vs.

THE HOME DEPOT U.S.A., INC.; et
al.,

Defendants.

Case No. 2:22-cv-1241-KJN PS

**STIPULATION AND PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of the following: (1) Closed-circuit television footages retrieved from Defendant Home Depot U.S.A., Inc.'s ("Home Depot") store cameras. These footages would allow the viewer to determine the locations and placement of "live cameras" in Home Depot's

stores, which is information so confidential that is not shared with most Home Depot employees. (2) Home Depot's Standard Operating Procedures and training guides. These materials are unique and akin to a road map or encyclopedia of Home Depot's operations and business practices, and created through the collective experience and know-how of Home Depot's associates, and gives Home Depot a competitive advantage as the leading home improvement retailer. This advantage would be greatly diminished if Home Depot were required to publicly disclosed or publicly testified to its Standard Operating Procedures and/or training guides, thereby making them available to Home Depot's competitors.

The need for protection of the aforementioned material should be addressed by a court order as opposed to a private agreement between the parties because the parties intend to file pleadings with the court that incorporate said information. Thus, an agreed-upon protocol for handling the sensitive information that has been approved by the court would facilitate and streamline the process. Further, a protective order entered by the court will facilitate discovery for the purposes of litigation while keeping the information in limited circulation and out of the public eye.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. DEFINITIONS

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: Attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: Attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
3 Party or Non-Party that designates information or items for protection under this Order
4 must take care to limit any such designation to specific material that qualifies under the
5 appropriate standards. The Designating Party must designate for protection only those
6 parts of material, documents, items, or oral or written communications that qualify – so
7 that other portions of the material, documents, items, or communications for which
8 protection is not warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that
10 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
11 to unnecessarily encumber or retard the case development process or to impose
12 unnecessary expenses and burdens on other parties) expose the Designating Party to
13 sanctions.

14 If it comes to a Designating Party's attention that information or items that it
15 designated for protection do not qualify for protection, that Designating Party must
16 promptly notify all other Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
19 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
20 must be clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the
24 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected
25 material. If only a portion or portions of the material on a page qualifies for protection, the
26 Producing Party also must clearly identify the protected portion(s) (e.g., by making
27 appropriate markings in the margins). A Party or Non-Party that makes original
28 documents or materials available for inspection need not designate them for protection

1 until after the inspecting Party has indicated which material it would like copied and
 2 produced. During the inspection and before the designation, all of the material made
 3 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party
 4 has identified the documents it wants copied and produced, the Producing Party must
 5 determine which documents, or portions thereof, qualify for protection under this Order.
 6 Then, before producing the specified documents, the Producing Party must affix the
 7 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
 8 portion or portions of the material on a page qualifies for protection, the Producing Party
 9 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
 10 in the margins).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 12 the Designating Party identify on the record, before the close of the deposition, hearing, or
 13 other proceeding, all protected testimony.

14 (c) for information produced in some form other than documentary and for any
 15 other tangible items, that the Producing Party affix in a prominent place on the exterior of
 16 the container or containers in which the information or item is stored the legend
 17 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
 18 protection, the Producing Party, to the extent practicable, shall identify the protected
 19 portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 21 to designate qualified information or items does not, standing alone, waive the
 22 Designating Party’s right to secure protection under this Order for such material. Upon
 23 timely correction of a designation, the Receiving Party must make reasonable efforts to
 24 assure that the material is treated in accordance with the provisions of this Order.

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
 27 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
 28 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,

unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for

doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and

1 Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the
3 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
6 reasonably necessary for this litigation and who have signed the “Acknowledgment and
7 Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, mock
10 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
16 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
17 Protected Material must be separately bound by the court reporter and may not be
18 disclosed to anyone except as permitted under this Stipulated Protective Order.

19 (g) the author or recipient of a document containing the information or a custodian
20 or other person who otherwise possessed or knew the information.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation that
24 compels disclosure of any information or items designated in this action as
25 “CONFIDENTIAL,” that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order to issue

1 in the other litigation that some or all of the material covered by the subpoena or order is
2 subject to this Protective Order. Such notification shall include a copy of this Stipulated
3 Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
5 Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the
7 subpoena or court order shall not produce any information designated in this action as
8 “CONFIDENTIAL” before a determination by the court from which the subpoena or
9 order issued, unless the Party has obtained the Designating Party’s permission. The
10 Designating Party shall bear the burden and expense of seeking protection in that court of
11 its confidential material – and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
13 from another court.

14 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
15 **PRODUCED IN THIS LITIGATION**

16 (a) The terms of this Order are applicable to information produced by a Non-Party
17 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
18 Parties in connection with this litigation is protected by the remedies and relief provided
19 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
20 from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to produce a
22 Non-Party’s confidential information in its possession, and the Party is subject to an
23 agreement with the Non-Party not to produce the Non-Party’s confidential information,
24 then the Party shall:

25 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
26 all of the information requested is subject to a confidentiality agreement with a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
28 in this litigation, the relevant discovery request(s), and a reasonably specific description of

1 the information requested; and

2 (3) make the information requested available for inspection by the Non-Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court within
4 14 days of receiving the notice and accompanying information, the Receiving Party may
5 produce the Non-Party's confidential information responsive to the discovery request. If
6 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
7 information in its possession or control that is subject to the confidentiality agreement
8 with the Non-Party before a determination by the court. Absent a court order to the
9 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
10 court of its Protected Material.

11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
13 Protected Material to any person or in any circumstance not authorized under this
14 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
15 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
16 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
17 unauthorized disclosures were made of all the terms of this Order, and (d) request such
18 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
19 attached hereto as Exhibit A.

20 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
21 **PROTECTED MATERIAL**

22 When a Producing Party gives notice to Receiving Parties that certain inadvertently
23 produced material is subject to a claim of privilege or other protection, the obligations of
24 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
25 This provision is not intended to modify whatever procedure may be established in an e-
26 discovery order that provides for production without prior privilege review. Pursuant to
27 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
28 effect of disclosure of a communication or information covered by the attorney-client

1 privilege or work product protection, the parties may incorporate their agreement in the
2 stipulated protective order submitted to the court.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to disclosing
8 or producing any information or item on any ground not addressed in this Stipulated
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in
10 evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating
12 Party or a court order secured after appropriate notice to all interested persons, a Party
13 may not file in the public record in this action any Protected Material. Protected Material
14 may only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material at issue. If a Receiving Party's request to file Protected
16 Material under seal pursuant is denied by the court, then the Receiving Party may file the
17 information in the public record unless otherwise instructed by the court.

18 **13. FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, as defined in paragraph 4,
20 each Receiving Party must return all Protected Material to the Producing Party or destroy
21 such material. As used in this subdivision, "all Protected Material" includes all copies,
22 abstracts, compilations, summaries, and any other format reproducing or capturing any of
23 the Protected Material. Whether the Protected Material is returned or destroyed, the
24 Receiving Party must submit a written certification to the Producing Party (and, if not the
25 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
26 (by category, where appropriate) all the Protected Material that was returned or destroyed
27 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the

1 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
2 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
3 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials contain
5 Protected Material. Any such archival copies that contain or constitute Protected Material
6 remain subject to this Protective Order as set forth in Section 4 (DURATION).

7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8 DATED: November 17, 2022 GOODMAN NEUMAN HAMILTON LLP

9
10 By: /s/ Paige Yeh
11 PAIGE YEH
12 Attorneys for Defendant
13 HOME DEPOT U.S.A., INC.

14 DATED: November 17, 2022 DEITCHMAN & DEITCHMAN


15
16 By: /s/ William A. Deitchman
17 WILLIAM A. DEITCHMAN
18 Attorneys for Plaintiffs
19 KENNETH PRESBA and KRIS
20 PRESBA

21 **ORDER**

22 The court has reviewed the parties' stipulated protective order. (See ECF No. 10). The
23 stipulation comports with the relevant authorities and the court's applicable local rule. See L.R.
24 141.1. The court APPROVES the protective order, subject to the following clarification. The
25 Local Rules state that once an action is closed, "unless otherwise ordered, the court will not
26 retain jurisdiction over enforcement of the terms of any protective order filed in that action."
27 L.R. 141.1(f); see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D.
28 Cal., Feb. 03, 2017) (noting that courts in the district generally do not agree to retain jurisdiction

1 for disputes concerning protective orders after closure of the case). Thus, the court will not
2 retain jurisdiction over this protective order once the case is closed.

3 Dated: November 18, 2022

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5 KENDALL J. NEWMAN
6 UNITED STATES MAGISTRATE JUDGE

7 pres.1241
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California, Sacramento Division, on _____ in the case of *Kenneth Presba and Kris Presba v. The Home Depot U.S.A., Inc.*, United States District Court, Eastern District of California, Sacramento Division, Case No. 2:22-cv-1241-KJN PS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California, Sacramento Division for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of

[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____
Printed name: _____
Signature: _____
City and State where sworn and signed: _____